



legal

Legal and Business Traps for the Unwary

Social Networking

Social networking is a fascinating, effective and fun way to interact with friends, meet new people, engage in professional networking and stay in touch. As a result, the growth of social networking in recent years has been staggering.

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FACEBOOK®, for example, now touts more than 200 million users worldwide, each with an average of 120 friends. Twitter™, unleashed to the world in 2006, experienced a 752 percent growth in the number of its members in 2008, which included more than 1 million members joining in December 2008 alone.

Social networking through blogs has also been an increasingly popular way to share information and to provide input on topics of interest. As new

technologies develop and creative entrepreneurs find new ways to connect people, challenges will arise for both the users of such services and technologies and their providers.

Unfortunately, the law is slow to change and usually lags behind new technological developments, so it is difficult to find clear principles on how to engage in social networking without incurring legal liability. Fortunately, there are some traditional laws, as well as new legislation, that provide assistance.

Blogs That Hurt

Blogging appears to be relatively harmless, but when a person's or business's reputation is on the line, or when intellectual property is misused, fireworks can erupt. Recently there have been stories about bloggers posting negative comments about businesses. The natural first reaction of the business is to call legal counsel and tell them to shut down the Web site. There may be a legal basis for doing so. If the information posted is false, and the reputation of the business is damaged, there may be damages available to recover from the blogger. However, there are a couple of legal considerations, as well as some significant practical issues to think about before lighting the fireworks.

Online service providers enjoy a certain level of immunity for their services. The immunity does not extend to the person posting the content at issue, but it generally protects the party providing the technology that facilitates the blog. But what may be even more critical is the practical side.

Bloggers have learned that if they post a strongly worded demand letter from a powerful law firm, sympathy starts to flow toward the blogger — not the business. The injured business may ultimately be able to terminate the blog, or obtain a judgment for damages, but if angry readers destroy its reputation along the way, the victory will be very shallow.

This can be especially true considering how simple it is to start a new blog. While one blog may be shut down, several others may pop up in its place. Despite its large numbers, the social networking community can be relatively close-knit, and the sympathetic and even passionate followers of the defunct blog may help to fuel the popularity of any new blogs. Further, if the business is able to obtain a judgment against an individual blogger, he or she may be virtually judgment-proof and unable to pay a judgment in any event.

Copyright Infringement

Posting content on social networking sites often involves intellectual property, usually

copyrighted materials. Virtually any original work is capable of copyright protection. So, if a blogger copies a photograph or other graphic, or copies part of an article or another blog post, there may be copyright infringement. Under the Digital Millennium Copyright Act, there is protection for the online service provider. However, as with the defamation issues, the person posting, and thereby infringing on another's intellectual property, does not share the same protection. Under copyright law, the potential remedies for the owner of the intellectual property can be significant, including statutory damages of up to \$150,000 if the infringement is found to be willful. Again, however, this has little value if the defendant has no assets.

Privacy Laws

Another potential concern is privacy. The trend around the world is toward giving individuals more legal protections for privacy, and yet, we are becoming much more open through the numerous social networking avenues available to us. What happens if a social networking Web site collects personal information for users, the information is wrongfully sent to a third party, and the third party misuses the information, perhaps for identity fraud? Should the host of the social networking site be held responsible? What if most of the information is found on an open social networking site anyway? Is there still responsibility? This and many other privacy issues remain unanswered.

Blogging, Twittering or any other form of social networking is taking us into uncharted waters, from both a legal and business perspective. The keys to an effective strategy are to understand your legal rights and responsibilities, and then to act cautiously. Immediately taking the traditional course to protect your rights might not be helpful. What may be legal may also cause the greatest damage. ☺

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